



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

James Freas
Acting Director

DATE: May 15, 2015

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: James Freas, Acting Director of Planning and Development

RE: #376-14 - PLANNING & DEVELOPMENT DEPARTMENT
requesting that Chapter 30 Zoning be deleted in its entirety and
replaced with the Zoning Reform Phase 1 Zoning Ordinance.

Cc: Board of Aldermen
Planning & Development Board

The Planning Department is issuing the following responses (**bold text**) to the questions submitted by Alderman Baker concerning the revised Draft Zoning Ordinance, date May 8th, 2015:

May 11, 2015 Questions

1. p. 1-12 D 1: small lower case x should be equal sign?

The adopted zoning ordinance uses the symbol ‘*’ (see page 380, definition of ‘Floor area, gross’, subsection a)vii.). The consultant interpreted this as a multiplication symbol. After further review of this equation and discussions with the Inspection Services Department, it appears this symbol should be an equal (=) symbol. As such, we have updated the equation in the latest version of the revised zoning ordinance to include an equal (=) symbol.

2. p. 2-2, .2.2: This provision saying only site plan review is required may need rewriting. Religious and educational uses can be subject to special permit when involving an extension of a nonconforming structure. See Section 7.8.2 on page 7-23. The case involving Boston College invalidated some of the dimensional zoning but not the special permit or the process on which it was based. This needs rewriting. Moreover, Section 3.3.2 on page 3-22 specifically allows the use of a special permit in the case of certain educational uses, and parking waiver special permits have occurred for such uses in the past – see. 5.1.3 on page 5-3. Note also that those requirements, set forth in the Table, do not include institutional uses, other than dormitories which should be included? Finally, see p. 6-10 where non accessory uses to a religious institution requires a special permit.

Under Sec. 2.2.1.A and Sec. 2.2.1.B the word ‘only’ has been removed. No special permit references were incorporated into these sections. In instances where a special permit is required for a religious institution or educational use, say for accessory uses or parking, the requirement has been

incorporated into the respective article of this revised zoning ordinance. This was done to address ambiguities and clarify inconsistencies or conflicts of the adopted zoning ordinance. In the Table under Sec. 5.1.4.A. the use 'Religious Institution' and its parking requirement has been added.

3. p. 3-23: In the Table in the middle of the page, should it not say lot area per single family use? (See Table 3.4.1 on page 3-25 where such a term is used.)

The adopted zoning ordinance references 'minimum lot area per dwelling unit' (see page 421, Sec. 30-15(k)(2)). The Table in Sec. 3.3.3.A. of the latest version of the revised zoning ordinance has been updated to read: Lot Area per Dwelling Unit (min).

4. p. 3-26: The reference to Accessory Apartments is wrong: Section 6.2.5. refers to Assisted Living or Nursing Home. The correct reference should be to Section 6.7 on page 6-17.

The section cross-reference in the latest version of the revised zoning ordinance is the correct.

5. p. 6-3, Section 6.1 – Use determination by CIS: is it clear, where no building permit is required, that a use determination with which an abutter disagrees is appealable to the ZBA?

A building permit is required for any use to occupy a building or structure in the City, even if a use determination is made. The appeal process for disagreements of approvals or decisions of the Commissioner of Inspectional Services is outlined in Sec. 7.7. of the latest version of the revised zoning ordinance.

6. p. 7-23, Section 7.8.2: Nonconforming uses should be retitled nonconforming uses and structures. See subsection C, and should 7.8.3 be a separate section since it speaks to when a special permit is not required where the former section does so? (Note if a section number is changed, or its title, some global search should be done to make sure that any cross-references that exist are corrected.)

The previously present Sec. 7.8.2 and Sec. 7.8.3 have been reorganized and retitled to clarify the content of the adopted zoning ordinance. The updated language and structure is presented in the latest version of the revised zoning ordinance.

7. Finally, while I am not sure of where it now appears, it is important not to undo, but inadvertence, the careful changes made by the Board of Aldermen to avoid substandard residential lots from being built upon. Section 7.8.4 refers to substandard commercial lots only, so care may need to be taken with that or its equivalent section elsewhere.

A substandard residential lot cannot be built on, unless allowed by the zoning ordinance. This section deals specifically with substandard commercial lots. Substandard residential lots are addressed in Sec. 7.8.1. The changes proposed in the revised zoning ordinance addresses ambiguities and clarify inconsistencies or conflicts of the adopted zoning ordinance.

May 12, 2015 Questions

1. 'Places of assembly' was deleted as definition and a category where it seems important to retain for parking reasons alone.

The 'Places of Assembly' definition has been deleted. The removal of this definition was discussed by ZAP. As it was previously defined, it created several conflicts within the use table as the definition included uses that were allowed in some districts where 'Places of Assembly' were not allowed. In other places where the term was used, it created unnecessary repetition. Rather than

attempt to make all of the changes necessary to correct the conflicting provisions, the easiest solution was to remove the definition. As the term is easily understood in context, and many similar terms are not defined in the Zoning Ordinance, staff believed the definition was unnecessary at this time. The definition is not necessary for interpretation of the parking regulations.

2. In the accessory apartment provision. A key definition used throughout is building size and that defined term has been deleted. There is to size of a dwelling but that is use.

The definition for 'building size' has not been deleted, and can be found in Sec. 6.7.1.G. of the latest version of the revised zoning ordinance.

3. I suggest that you review the provisions as edited to make sure that they work so that the requisite calculations can still be made and are unchanged from the existing ordinance.

The 'building size' calculation remains unchanged from the adopted zoning ordinance.

May 14, 2015 Questions

1. The new section 6.7.1 also contains Section G "Building Size" that I cannot find in the existing ordinance. It allows inclusion of areas not counted in "Gross Floor Area" as defined elsewhere. I do not recall this being discussed in the Committee, but I am glad to be reminded if so.

The proposed Sec. 6.7.1.G., which contains the formula for calculating building size, was previously located under the definition of 'Building size' in Sec. 30-1 *Definitions* (see page 376) of the existing zoning ordinance. The language as presented does not differ from the language currently in the adopted zoning ordinance.

2. There also seems to be is a difference between the existing and new ordinance on "Requirements" for pre-existing accessory apartments. Both versions refer back to a list of prior requirements, but the new version omits C.1.e (no more than one per lot).

The latest version of the revised zoning ordinance has been updated to correctly reference all the requirements applicable to pre-existing accessory apartment units. The complete list of requirements can be found in Sec. 6.7.1.H.3. *Requirements*.

3. The current "Final Draft" dated May 8, 2015 includes definitions of an internal accessory apartment as a "dwelling unit in a dwelling unit" both in the general definition (6.7.1.A) and the internal case (6.7.1.A.1):

"6.7.1 Accessory Apartments

A. **Accessory Apartment Defined.** A separate dwelling unit located in a ~~building originally constructed as a~~ single- family or two-family dwelling unit or in a detached building located on the same lot as the single-family or two-family dwelling unit, as an accessory and subordinate use to the residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this Sec. 6.7.

1. **Internal.** An accessory apartment located within a single-family or two-family dwelling unit and the owner of the ~~single-family~~ dwelling occupies either the ~~principal~~main dwelling unit or the accessory apartment;"

A "dwelling unit" is, however, defined as a single habitable space in Section 1.5.1.E:

E. Dwelling Unit. One or more rooms forming a habitable unit for 1 family, with facilities used or intended to be used, in whole or in part, for living, sleeping, cooking, eating and sanitation.

The two sections are inconsistent. A “dwelling unit” cannot be both defined as singular (1 family) and then also contain a second dwelling unit, the accessory apartment. The definitions in the accessory apartment section should only use the term “dwelling unit” as defined in 1.5.1.E.

The current zoning ordinance (Section 30-1 on p.2) definition for an internal accessory apartment that avoids this inconsistency by clearly stating that it is in a building, not a “dwelling unit.”

Accessory apartment: A separate dwelling unit located in a building originally constructed as a single family or two family dwelling or in a detached building located on the same lot as the single family or two family dwelling, as an accessory and subordinate use to the residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of section 30-8(d) and 30-9(h) of this ordinance.

The “Final Draft” dated May 8, 2015 omits the mention of “building.” The use of the term “dwelling unit” when it actually is referring to the building also occurs elsewhere in Section 6.7.1, namely in 6.7.1.B.2 and 6.7.1.H.

The inconsistencies can be corrected by following the wording in the existing ordinance and simply removing the word “unit” in the instances for which the context implies it is referring to the building, not its use.

The latest version of the revised zoning ordinance has eliminated the word ‘unit’ in the proposed Sec. 6.7.1.A and Sec. 6.7.1.A.1. This should rectify the above referenced concern.